

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 188
95TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, March 5, 2009, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bill No. 188, adopted March 24, 2009.

Taken up for Perfection March 24, 2009. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

0544S.04P

AN ACT

To repeal sections 311.060, 311.260, 311.297, 311.332, 311.333, 311.334, 311.335, 311.336, 311.338, and 311.490, RSMo, and to enact in lieu thereof eight new sections relating to liquor control, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 311.060, 311.260, 311.297, 311.332, 311.333, 311.334, 311.335, 311.336, 311.338, and 311.490, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 311.060, 311.260, 311.297, 311.332, 311.333, 311.335, 311.338, and 311.490, to read as follows:

311.060. 1. No person shall be granted a license hereunder unless such person is of good moral character and a qualified legal voter and a taxpaying citizen of the county, town, city or village, nor shall any corporation be granted a license hereunder unless the managing officer of such corporation is of good moral character and a qualified legal voter and taxpaying citizen of the county, town, city or village; and no person shall be granted a license or permit hereunder whose license as such dealer has been revoked, or who has been convicted, since the ratification of the twenty-first amendment to the Constitution of the United States, of a violation of the provisions of any law applicable to the manufacture or sale of intoxicating liquor, or who employs in his **or her** business as such dealer, any person whose license has been revoked or who has been convicted of violating such law since the date aforesaid; provided, that nothing in this section contained shall prevent the issuance of licenses to nonresidents of Missouri or

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

14 foreign corporations for the privilege of selling to duly licensed wholesalers and
15 soliciting orders for the sale of intoxicating liquors to, by or through a duly
16 licensed wholesaler, within this state.

17 2. (1) No person, partnership or corporation shall be qualified for a
18 license under this law if such person, any member of such partnership, or such
19 corporation, or any officer, director, or any stockholder owning, legally or
20 beneficially, directly or indirectly, ten percent or more of the stock of such
21 corporation, or other financial interest therein, or ten percent or more of the
22 interest in the business for which the person, partnership or corporation is
23 licensed, or any person employed in the business licensed under this law shall
24 have had a license revoked under this law or shall have been convicted of
25 violating the provisions of any law applicable to the manufacture or sale of
26 intoxicating liquor since the ratification of the twenty-first amendment to the
27 Constitution of the United States, or shall not be a person of good moral
28 character.

29 (2) No license issued under this chapter or chapter 312, RSMo, shall be
30 denied, suspended, revoked or otherwise affected based solely on the fact that an
31 employee of the licensee has been convicted of a felony unrelated to the
32 manufacture or sale of intoxicating liquor [so long as any such employee does not
33 directly participate in retail sales of intoxicating liquor]. Each employer shall
34 report the identity of any employee convicted of a felony to the division of liquor
35 control. The division of liquor control shall promulgate rules to enforce the
36 provisions of this subdivision.

37 (3) No wholesaler license shall be issued to a corporation for the sale of
38 intoxicating liquor containing alcohol in excess of five percent by weight, except
39 to a resident corporation as defined in this section.

40 3. A "resident corporation" is defined to be a corporation incorporated
41 under the laws of this state, all the officers and directors of which, and all the
42 stockholders, who legally and beneficially own or control sixty percent or more of
43 the stock in amount and in voting rights, shall be qualified legal voters and
44 taxpaying citizens of the county and municipality in which they reside and who
45 shall have been bona fide residents of the state for a period of three years
46 continuously immediately prior to the date of filing of application for a license,
47 provided that a stockholder need not be a voter or a taxpayer, and all the resident
48 stockholders of which shall own, legally and beneficially, at least sixty percent of
49 all the financial interest in the business to be licensed under this law; provided,

50 that no corporation, licensed under the provisions of this law on January 1, 1947,
51 nor any corporation succeeding to the business of a corporation licensed on
52 January 1, 1947, as a result of a tax-free reorganization coming within the
53 provisions of Section 112, United States Internal Revenue Code, shall be
54 disqualified by reason of the new requirements herein, except corporations
55 engaged in the manufacture of alcoholic beverages containing alcohol in excess
56 of five percent by weight, or owned or controlled, directly or indirectly, by
57 nonresident persons, partnerships or corporations engaged in the manufacture of
58 alcoholic beverages containing alcohol in excess of five percent by weight.

59 4. The term "financial interest" as used in this chapter is defined to mean
60 all interest, legal or beneficial, direct or indirect, in the capital devoted to the
61 licensed enterprise and all such interest in the net profits of the enterprise, after
62 the payment of reasonable and necessary operating business expenses and taxes,
63 including interest in dividends, preferred dividends, interest and profits, directly
64 or indirectly paid as compensation for, or in consideration of interest in, or for use
65 of, the capital devoted to the enterprise, or for property or money advanced,
66 loaned or otherwise made available to the enterprise, except by way of ordinary
67 commercial credit or bona fide bank credit not in excess of credit customarily
68 granted by banking institutions, whether paid as dividends, interest or profits,
69 or in the guise of royalties, commissions, salaries, or any other form whatsoever.

70 5. The supervisor shall by regulation require all applicants for licenses to
71 file written statements, under oath, containing the information reasonably
72 required to administer this section. Statements by applicants for licenses as
73 wholesalers and retailers shall set out, with other information required, full
74 information concerning the residence of all persons financially interested in the
75 business to be licensed as required by regulation. All material changes in the
76 information filed shall be promptly reported to the supervisor.

311.260. 1. No person, corporation, employee, officer, agent, subsidiary,
2 or affiliate thereof, shall:

3 (1) Have more than ~~three~~ **five** licenses; or

4 (2) Be directly or indirectly interested in any business of any other person,
5 corporation, or employee, officer, agent, subsidiary, or affiliate thereof, who sells
6 intoxicating liquor at retail by the drink for consumption on the premises
7 described in any license; or

8 (3) Sell intoxicating liquor at retail by the drink for consumption at the
9 place of sale at more than three places in this state.

10 2. Notwithstanding any other provision of this chapter or municipal
11 ordinance to the contrary, for the purpose of determining whether a person,
12 corporation, employee, officer, agent, subsidiary, or affiliate thereof has a
13 disqualifying interest in more than three licenses pursuant to subsection 1 of this
14 section, there shall not be counted any license to sell intoxicating liquor at retail
15 by the drink for consumption on the following premises:

16 (1) Restaurants where at least fifty percent of the gross income of which
17 is derived from the sale of prepared meals or food consumed on the premises
18 where sold; or

19 (2) Establishments which have an annual gross income of at least two
20 hundred thousand dollars from the sale of prepared meals or food consumed on
21 the premises where sold; or

22 (3) Facilities designed for the performance of live entertainment and
23 where the receipts for admission to such performances exceed one hundred
24 thousand dollars per calendar year; or

25 (4) Any establishment having at least forty rooms for the overnight
26 accommodation of transient guests.

311.297. 1. Any winery, distiller, manufacturer, wholesaler, or brewer or
2 designated employee may provide and pour distilled spirits, wine, or malt
3 beverage samples off a licensed retail premises for tasting purposes provided no
4 sales transactions take place. For purposes of this section, a "sales transaction"
5 shall mean an actual and immediate exchange of monetary consideration for the
6 immediate delivery of goods at the tasting site.

7 2. Notwithstanding any other provisions of this chapter to the contrary,
8 any winery, distiller, manufacturer, wholesaler, or brewer or designated employee
9 may provide, furnish, or pour distilled spirits, wine, or malt beverage samples for
10 customer tasting purposes on any temporary licensed retail premises as described
11 in section 311.218, 311.482, 311.485, 311.486, or 311.487, or on any tax exempt
12 organization's licensed premises as described in section 311.090.

13 **3. Notwithstanding any other provisions of this chapter to the**
14 **contrary, any winery, distiller, manufacturer, wholesaler, or brewer or**
15 **designated employee may provide, furnish, or pour distilled spirits,**
16 **wine, or malt beverage samples on a licensed retail premises for**
17 **customer tasting purposes. The retail licensed premises where such**
18 **product tasting is provided shall maintain a special permit in**
19 **accordance with section 311.294 or hold a by-the-drink-for-**

20 **consumption-on-the-premises-where-sold retail license. No money or**
21 **anything of value shall be given to the retailers for the privilege or**
22 **opportunity of conducting the on-the-premises product tasting.**

311.332. 1. [Except as provided in subsections 2 and 3 of this section,] It
2 shall be unlawful for any wholesaler licensed to sell intoxicating liquor and wine
3 containing alcohol in excess of five percent by weight to persons duly licensed to
4 sell such intoxicating liquor and wine at retail, to discriminate between retailers
5 or in favor of or against any retailer or group of retailers, directly or indirectly,
6 in price, in discounts for time of payment, or in discounts on quantity of
7 merchandise sold, or to grant directly or indirectly any discount, rebate, free
8 goods, allowance or other inducement, excepting a discount not in excess of one
9 percent for quantity of liquor and wine, and a discount not in excess of one
10 percent for payment on or before a certain date. The delivery of manufacturer
11 rebate coupons by wholesalers to retailers shall not be a violation of this
12 subsection.

13 2. [Except as provided in subsection 3 of this section, any wholesaler
14 licensed to sell intoxicating liquor and wine containing alcohol in excess of five
15 percent by weight to persons duly licensed to sell such intoxicating liquor and
16 wine at retail may offer a price reduction of not more than four percent of the
17 wholesaler's price schedule for any brand, age, proof, and size bottle or
18 package. Such price reduction shall apply for a thirty-day period, shall not be
19 offered by any wholesaler more than three times in any calendar year, and shall
20 not be offered during successive months.

21 3. Any wholesaler licensed to sell intoxicating liquor and wine containing
22 alcohol in excess of five percent by weight to persons duly licensed to sell such
23 intoxicating liquor and wine at retail may offer a price reduction of more than
24 four percent of the scheduled price on close-out merchandise. "Close-out
25 merchandise" is any item which has been in the wholesaler's inventory for more
26 than six months. The price of close-out merchandise may be decreased, but shall
27 not be increased, monthly for up to and including twelve consecutive months. A
28 wholesaler shall not purchase any item of intoxicating liquor or wine of the same
29 year and vintage the wholesaler has classified as close-out merchandise during
30 the period of such classification. A wholesaler shall not purchase, sell, or offer
31 to sell any item of intoxicating liquor or wine of the same year and vintage the
32 wholesaler has classified as close-out merchandise until twenty-four months have
33 elapsed since the wholesaler's last offer to sell the item as close-out merchandise.

34 4.] Manufacturers or wholesalers shall be permitted to donate or deliver
35 or cause to be delivered beer, wine, brandy, or nonintoxicating beer for nonresale
36 purposes to any unlicensed person or any licensed retail dealer who is a
37 charitable or religious organization as defined in section 313.005, RSMo, or
38 educational institution, at any location or licensed premises, provided, such beer,
39 wine, brandy, or nonintoxicating beer is unrelated to the organization's or
40 institution's licensed retail operation. A charge for admission to an event or
41 activity at which beer, wine, brandy, or nonintoxicating beer is available without
42 separate charge shall not constitute resale for the purposes of this
43 subsection. Wine used in religious ceremonies may be sold by wholesalers to a
44 religious organization as defined in section 313.005, RSMo. Any manufacturer
45 or wholesaler providing nonresale items shall keep a record of any deliveries
46 made pursuant to this subsection.

47 [5.] 3. Manufacturers, wholesalers, retailers and unlicensed persons may
48 donate wine in the original package to a charitable or religious organization as
49 defined in section 313.005, RSMo, or educational institution for the sole purpose
50 of being auctioned by the organization or institution for fund-raising purposes,
51 provided the auction takes place on a retail-licensed premises and all proceeds
52 from the sale go into a fund of an organization or institution that is unrelated to
53 any licensed retail operation.

 311.333. 1. Any wholesaler licensed under this chapter to sell
2 intoxicating liquors and wines may accept the return of any intoxicating liquor
3 containing alcohol in excess of five percent by weight and wines as provided by
4 rules and regulations promulgated by the supervisor of liquor control, pursuant
5 to chapter 536, RSMo.

6 2. Any wholesaler licensed to sell intoxicating liquor or wine
7 containing alcohol in excess of five percent by weight to persons duly
8 licensed to sell such intoxicating liquor and wine at retail shall make
9 available to all such retailers, not later than five days prior to the first
10 day of the month in which the pricing is to be effective, information
11 regarding all products which shall be available for sale in the next
12 month. Such information shall include the brand or trade name,
13 capacity of individual packages, nature of contents, age and proof, the
14 per bottle and per case price which shall be offered equally to all
15 retailers, the number of bottles contained in each case, and the size
16 thereof. The price provided to retailers under this section shall become

17 **effective on the first day of the next month and remain in effect until**
18 **the last day that month. Supplemental pricing information may be**
19 **provided to retailers by wholesalers for items that were unintentionally**
20 **left off a regular monthly item information listing or for new items**
21 **after approval for sale in Missouri by the Missouri division of alcohol**
22 **and tobacco control. A wholesaler shall be allowed to sell such items**
23 **to retailers immediately upon production of such supplemental**
24 **information.**

311.335. 1. Any wholesaler licensed to sell intoxicating liquor and wine
2 containing alcohol in excess of five percent by weight [pursuant to chapter 311]
3 shall [ship and] deliver **such** intoxicating liquor and wine to a retailer [in the
4 amount for which the scheduled price set forth on the invoice is in effect] **at the**
5 **price in effect for that calendar month in which the delivery occurs.**

6 2. Such wholesaler licensed to sell intoxicating liquor and wine containing
7 alcohol in excess of five percent by weight shall not take an order for delivery in
8 a month subsequent to the month in which the order is taken, provided that [on
9 and after the date on which amended price schedules are filed with the supervisor
10 of liquor control] **during the last five business days of each month**, orders
11 may be taken for delivery in the following month at the price in effect for that
12 following month and provided, further, that for any order received within the last
13 [three] **five** business days of a month, the wholesaler may, with the consent of
14 the retailer placing such order [or upon the request of the retailer placing such
15 order], deliver such order to the retailer within the first [three] **five** business
16 days of the month following the month in which the order was received by such
17 wholesaler at the price in effect for the month in which the order was
18 placed. Such order received within the last [three] **five** business days of a month
19 and delivered within the first [three] **five** business days of the subsequent month
20 shall be known as a "delayed shipment". A delayed shipment shall be deemed
21 delivered on the last business day of the month in which the order was received
22 for purposes of implementing and enforcing rules and regulations of the
23 supervisor of [liquor] **alcohol and tobacco** control relating to invoicing,
24 discounts and ordinary commercial credit terms.

25 3. Any wholesaler licensed to sell intoxicating [liquor or wine] **liquors**
26 **and wines** containing alcohol in excess of five percent by weight [violating any
27 provision of this section shall be subject to, and punished pursuant to, the
28 penalties and provisions of section 311.680] **shall be allowed to offer for sale**

29 intoxicating liquors or wines containing alcohol in excess of five
30 percent by weight to persons duly licensed to sell intoxicating liquors
31 and wines at retail at prices which are below the wholesaler's cost only
32 if such intoxicating liquors and wines are designated to be close-out
33 merchandise. Wholesalers shall designate intoxicating liquors and
34 wines containing alcohol in excess of five percent by weight to be close-
35 out merchandise by identifying them such as close-out items when
36 providing monthly pricing information to retailers as required in
37 section 311.333. A wholesaler shall not purchase any intoxicating
38 liquor or wine containing alcohol in excess of five percent by weight
39 while such intoxicating liquor or wine is designated as close-out
40 merchandise. Intoxicating liquors or wines containing alcohol in
41 excess of five percent by weight that are designated as close-out
42 merchandise shall be designated as close-out merchandise for not less
43 than six consecutive months. After such time, a wholesaler may remove
44 items from close-out designation by no longer identifying them as close-
45 out items when providing monthly pricing information to retailers as
46 required in section 311.333.

311.338. Any person violating any provisions of sections 311.332 [to
2 311.336], **311.333, and 311.335** shall be deemed guilty of a misdemeanor, and
3 it shall be the duty of the supervisor of liquor control to suspend or revoke the
4 license of any wholesaler violating any of the provisions of sections 311.332 [to
5 311.336], **311.333, and 311.335**.

311.490. No person, partnership or corporation engaged in the brewing,
2 manufacture or sale of beer as defined, in this chapter, or other intoxicating malt
3 liquor, shall use in the manufacture or brewing thereof, or shall sell any such
4 beer or other intoxicating malt liquor which contains ingredients not in
5 compliance with the following standards:

- 6 (1) Beer shall be brewed from malt or a malt substitute, which only
7 includes rice, grain of any kind, bean, glucose, sugar, and molasses. Honey, fruit,
8 fruit juices, fruit concentrate, herbs, spices, and other food materials may be used
9 as adjuncts in fermenting beer;
- 10 (2) Flavor and other nonbeverage ingredients containing alcohol may be
11 used in producing beer, but may contribute to no more than forty-nine percent of
12 the overall alcohol content of the finished beer. In the case of beer with an
13 alcohol content of more than six percent by volume, no more than one and

14 one-half percent of the volume of the beer may consist of alcohol derived from
15 added flavors and other nonbeverage ingredients containing alcohol; and

16 (3) Beer, intoxicating malt liquor, and malt beverages, as defined in this
17 section, shall not be subject to the requirements of [subsections] **subsection 1** [,
18 2, and 3] of section 311.332 and sections [311.334 to] **311.335 and** 311.338.

[311.334. No intoxicating liquor and wine of any kind shall
2 be sold by a wholesaler to a retailer duly licensed to sell
3 intoxicating liquor and wine at retail, or purchased by a wholesaler
4 for a retailer or by a retailer through a wholesaler, unless a
5 schedule as provided by this section shall be filed by the wholesaler
6 with the supervisor of liquor control and is then in effect. The
7 schedule shall be in writing, duly verified and filed in the number
8 of copies and in such form as required by the supervisor, and shall
9 contain with respect to each item thereon the exact brand or trade
10 name, capacity of package, nature of contents, age and proof, the
11 per bottle and per case price to retailers, the number of bottles
12 contained in each case, and the size thereof, which prices shall be
13 individual for each item, and not in "combination" with any other
14 item or items, the discounts for quantity, if any, and the discounts
15 for time of payment, if any.]

[311.336. Each such schedule shall be filed on or before the
2 tenth day of each month, and the prices and discounts therein set
3 forth shall become effective on the first day of the calendar month
4 following the filing thereof, and shall be in effect for and during
5 such calendar month. Within ten days after the filing of such
6 schedule the supervisor shall make all of such schedules or a
7 composite thereof available for inspection by all wholesale
8 licensees. Within three days, excluding Sundays, after such
9 inspection is provided for, a wholesaler may amend his filed
10 schedule for sales to a retailer, or purchase for a retailer or by a
11 retailer through a wholesaler in order to meet lower competing
12 prices and discounts for liquor or wine of the same brand and trade
13 name and of like age and quality, filed pursuant to this section or
14 section 311.334 by any licensee selling such brand; provided,
15 however, such amended prices may not be lower and discounts not
16 greater than those to be met. Any amended schedule so filed shall

17 become effective on the first day of the calendar month following
18 the filing thereof, and shall be in effect for and during such
19 calendar month. No brand of liquor or wine shall be sold or
20 purchased for a retailer by a wholesaler or by a retailer through a
21 wholesaler except at the price or prices then in effect according to
22 the wholesaler's filed schedule, and no discount shall be granted
23 except as set forth in the schedule then in effect. All schedules
24 filed shall be subject to public inspection from the time that they
25 are required to be made available for inspection by licensees and
26 shall not be in any manner considered confidential. Each
27 wholesaler shall retain in his licensed premises for inspection by
28 licensees a copy of his filed schedules then in effect. The
29 supervisor of liquor control may make such rules and regulations
30 as shall be appropriate to carry out the purpose of this section and
31 sections 311.332 and 311.334.]

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Bill

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